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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JOSEPH PIERRE RAOUF, Defendant and Appellant.	B276258 Los Angeles County Super. Ct. No. SA089323

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark E. Windham, Judge. Affirmed.

Elizabeth K. Horowitz, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Robert M. Snider, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Joseph Pierre Raouf was charged with numerous crimes stemming from two robberies. Following a bench trial, the court found defendant guilty of nine counts, including one count of making criminal threats and two counts of resisting an executive officer. The court also found true several firearm and prior conviction allegations and sentenced defendant to 27 years in prison. On appeal, defendant contends: (1) the court erred in admitting statements he made to investigating officers during a post-arrest interview conducted at the hospital and which form the basis for his criminal threats conviction; (2) insufficient evidence supports his conviction for criminal threats; and (3) insufficient evidence supports one of his convictions for resisting an executive officer. We affirm.

PROCEDURAL BACKGROUND

In July 2015, the People charged defendant with the following crimes: three counts of second degree robbery (Pen. Code,[1] § 211; counts 1, 6, and 7); three counts of resisting an executive officer (§ 69; counts 2, 3, and 13[2]); one count of battery by gassing of an officer (§ 243.9, subd. (a); count 4); one count of possession of a firearm by a felon (§ 29800, subd. (a)(1); count 5); one count of attempted second degree robbery (§§ 664/211; count 9); one count of assault with a deadly weapon other than a firearm (§ 245, subd. (c); count 10); one count of criminal threats (§ 422, subd. (a); count 11); and one count of misdemeanor battery

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[1] All undesignated statutory references are to the Penal Code.

[2] The People amended the information during trial to add count 13.

(§ 243, subd. (b); count 12). As to counts 1, 6, 7, and 9, the People alleged a principal in the robbery was armed with a firearm (§ 12022, subd. (a)(1)), and, as to counts 6 and 9, the People alleged defendant personally used a firearm (§ 12022.53, subd. (b)). As to counts 1 through 7 and 9 through 11, the People alleged defendant had served a prior prison term (§ 667.5, subd. (b)) and had suffered two prior serious or violent felony convictions (§ 667, subds. (b)-(j)), one for a criminal threats conviction in California in 2011 and the other for a terrorist threat conviction in New York in 2014.

In January 2016, the court found defendant incompetent to stand trial. He was transferred to Metropolitan State Hospital, where he remained until March 2016, when the court found his competency had been restored.

In May 2016, the court dismissed count 2 pursuant to section 995. The court also struck the prior strike allegation relating to defendant's 2014 terrorist threat conviction in New York.

In June 2016, defendant and the People waived their rights to a jury trial. Defendant changed his plea from not guilty to a dual plea of not guilty and not guilty by reason of insanity. Defendant also agreed to submit some of the evidence for the guilt phase of trial based on portions of the transcript from the preliminary hearing, and he waived his right to confront and cross-examine the witnesses whose testimony would be admitted through the preliminary hearing transcript. Prior to trial, the People dismissed count 9.

A bench trial commenced on June 22, 2016. After the People rested, the court granted defendant's motion to dismiss count 4 pursuant to section 1118. The court found defendant

guilty of counts 1, 3, 5, 6, 7, 10, 11, 12, and 13. As to counts 1 and 7, the court found true the allegations that a principal was armed with a firearm during the robberies; the court found not true the firearm allegations as to count 6. The court also found true the prior strike, prior serious or violent felony, and prior prison term allegations. Following a bifurcated bench trial on the issue of sanity, the court found defendant was sane at the time he committed the charged offenses.

The court sentenced defendant to a total term of 27 years, consisting of the following consecutive terms: 11 years for count 1; 1 year and 4 months for count 5; 2 years for count 6; 2 years and 4 months for count 7; 2 years and 8 months for count 10; 1 year and 4 months for count 11; 1 year and 4 months for count 13; and 5 years for the prior strike conviction under section 667, subdivision (a)(1). The court stayed the sentences for counts 3 and 12 under section 654.

Defendant filed a timely notice of appeal.[3]

FACTUAL BACKGROUND

1. The Robberies

On November 18, 2014, Mohammed Rahmin was working at a convenience store in Los Angeles when defendant approached the counter with another man. Defendant displayed a

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[3] Defendant also filed a petition for a writ of habeas corpus, arguing the trial court coerced him into waiving his right to a jury trial when he entered his dual plea of not guilty and not guilty by reason of insanity. We ordered defendant's writ petition to be considered at the same time as this appeal. We have denied the petition in a separate order.

gun and told Rahmin to give him money. Rahmin gave defendant money from both of the store's registers.

On December 1, 2014, defendant entered a bank in Beverly Hills. He passed a bag to one of the tellers along with a note that read, "Fill the bag with hundred dollar bills. Hurry up. We have guns!" The teller put several thousand dollars' worth of bills and a GPS tracking device in the bag.

Around 4:00 p.m. on December 1, 2014, Sergeant Robert Maycott and Officer Matthew Stout of the Beverly Hills Police Department received a tip that one of the robbery suspects had entered a hotel about a block and a half away from the bank. As he entered the hotel, Officer Stout saw defendant standing near the registration desk. Defendant turned and began to run toward the hotel's entrance, and Officer Stout followed. As defendant ran, he tripped and fell to the ground. When defendant landed on his back, Officer Stout saw what he believed to be a semi-automatic handgun in the waistline of defendant's pants. Defendant then reached toward his waist, at which point Officer Stout fired one round from his own gun, striking defendant in the right side of his chest.

After defendant was placed in handcuffs and treated for his wound, officers discovered that the item in defendant's waistline was a pellet-gun replica of a semi-automatic handgun. The officers also recovered a .38-caliber handgun from defendant's shirt pocket and a magazine containing two rounds of live ammunition from defendant's pants pocket. Defendant was arrested and taken to the hospital for additional medical treatment.

2. The Hospital Interview

On December 2, 2014, shortly after undergoing surgery for his gunshot wound, defendant was interviewed in his hospital room in the intensive care unit by Detective George Elwell, a Detective Coulter, and another officer from the Beverly Hills Police Department.[4] Defendant was receiving pain medication throughout the interview,[5] and, at the beginning of the interview, he was wearing an oxygen mask. A nurse was in the hospital room attending to defendant during parts of the interview.

The interview started with Detective Coulter asking defendant if there was anyone he wanted to call. Defendant replied, "The Islamic Republic of Iran." After Detective Coulter asked defendant whether he and the person he wanted to call spoke Farsi, defendant exclaimed, "I'm telling you your officer really should've killed me. There's gonna be a lot of problems on their hands." Detective Coulter asked defendant what he meant, to which defendant responded, "You'll see. I don't need to explain myself."

Detective Elwell then told defendant that the officers would "[l]ike to talk to you about what happened and your arrest. What I need to do is read you some things here." Defendant immediately replied, "I don't want to talk to any of you guys."

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[4] We have read the transcript, and listened to the audio recording, of defendant's interview.

[5] There is no evidence in the record showing what type of pain medication defendant was receiving at the time the officers interviewed him. There is also no evidence of any specific dosage of medication defendant was receiving, other than a statement by an attending nurse recorded during defendant's interview that defendant was receiving a "low dose."

Detective Elwell explained that he needed to advise defendant of his *Miranda*[6] rights and started to read defendant those rights when defendant interjected, "Get the fuck outta my face. How about that? Get the fuck outta my face." When Detective Coulter asked defendant whether he wanted to "tell [the officers] his side of the story," defendant replied, "No. Get the fuck outta my face. How about that[?] … [¶] and have you guys killed. How about that?"

As Detective Elwell continued to read defendant his *Miranda* rights, defendant claimed he was "gonna have—the cop that shot me slaughtered" and have "US government officials killed all over the world." After defendant told the officers to "Get the fuck outta his face" four more times, Detective Elwell replied, "Ok. We're done then." Defendant immediately responded, "Get the fuck outta my face before I have your mother raped—before I have your daughter raped—have your daughter raped." When Detective Coulter told defendant he was "a tough guy," defendant continued, "[H]ave your daughter raped. How about that? Have your fucking daughter raped, and your mother raped. Get them impregnated. How about that? Raped. Have the officer's mother raped—the daughter raped." When Detective Coulter asked defendant, "Why would you do that," defendant replied, "Record it. The judge killed. Have his daughter raped."

Detective Elwell then started to re-advise defendant of his *Miranda* rights. After Detective Elwell advised defendant that he has the right to remain silent and the right to an attorney, Detective Coulter started asking defendant questions about the bank robbery, the altercation with Officer Stout, and whether

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[6] *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

defendant had committed any other robberies. Defendant claimed that he robbed the bank to fund terrorist organizations in Saudi Arabia, and he continued to threaten the officers and their families.

After the officers asked defendant at least seven questions about the crimes they were investigating, defendant told them twice to "[g]et the fuck outta [his] face." Detective Coulter replied, "I think you figured out we're not gonna get out of your face." The officers continued to try to discuss the underlying crimes and the shooting involving Officer Stout, asking defendant about 30 more questions before defendant again threatened Officer Stout and his family: "What that I'm gonna have the officer slaughtered. I'm gonna have—his mother raped and killed. Make sure you have that recorded." The officers asked defendant several more questions about the robbery and the altercation with Officer Stout before concluding the interview.

While defendant was detained in the hospital, Officer Matthew Handlos was assigned to guard defendant's room. Defendant testified that he did not want Officer Handlos in his room, so he asked the officer to leave. When Officer Handlos refused to leave, defendant grabbed a bed pan and vomited into it. He then threw the pan at Officer Handlos, which struck Officer Handlos's right leg and splattered some of defendant's vomit onto Officer Handlos's leg, torso, and arm.

At trial, Officer Stout testified that he had been informed about defendant's threats to "slaughter" him and his family. Officer Stout was aware that defendant was in the hospital and being treated for his gunshot wound when he made the threats, but Officer Stout did not know how long defendant had been out of surgery when the officers interviewed him or whether

defendant was on pain medication throughout the interview. According to Officer Stout, defendant's statements took a "great toll" on his family, and he was concerned for the safety of his child and wife as well as his own safety. Officer Stout's wife sought psychological counseling, and Officer Stout paid over $3,000 to install new security equipment at his home. Officer Stout started to drive different routes to work and to take his child to school. Officer Stout was aware of defendant's criminal record as well as his history of "swatting"[7] people. As of the time of trial, Officer Stout remained concerned for the safety of his family and had maintained the security equipment at his home.

DISCUSSION

1. Admission of Defendant's Hospital Interview

Defendant contends the court erred in admitting the statements he made at the hospital, which form the basis for his criminal threats conviction. Specifically, he argues the statements were obtained in violation of *Miranda* because he invoked his right to remain silent when he told the officers he did not want to speak to them, and the officers never obtained a valid waiver of those rights before they continued questioning him. Defendant further contends his statements were involuntary because he had recently come out of surgery, was on pain medication, and was still being treated in the intensive care unit at the time of his interview. Although we agree that some of defendant's statements should have been excluded, the error was

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[7] According to Officer Stout, "swatting" involves "[m]aking false telephone calls or some means of communication that cause … great panic at a location."

harmless. We also conclude that defendant's statements were voluntary.

1.1. Relevant Proceedings

During trial, the People sought to admit the recording of defendant's hospital interview to prove the criminal threats charge. Defense counsel objected to the admission of the recording, arguing any incriminating statements defendant made during the interview were inadmissible because he invoked his *Miranda* rights when he told the officers he did not want to speak to them, and the officers never obtained a valid waiver of those rights before they continued questioning him. The People argued any incriminating statements defendant made with respect to the criminal threats charge were not protected by *Miranda* because they were spontaneous, did not incriminate defendant with respect to any crimes the officers were investigating, and were not made in response to any questions likely to elicit incriminating answers.

The court overruled defendant's objection, reasoning his statements were admissible because they were spontaneous and could form the basis for a new crime unrelated to any of the crimes the officers were investigating. Later, the court clarified that it would admit defendant's statements only to the extent they were relevant to defendant's sanity defense and establishing that he uttered criminal threats when he threatened to kill Officer Stout and his family. The court stated it would not consider any of defendant's statements that incriminated him in the robberies of the convenience store and the bank.

Defense counsel never objected to the admission of defendant's statements on the ground that they were involuntary.

1.2. Standard of Review

The prosecution bears the burden of establishing by a preponderance of the evidence that, under the totality of the circumstances of the interrogation, the defendant's waiver of his *Miranda* rights was knowing, intelligent, and voluntary, and that the defendant's incriminating statements were voluntarily made. (*People v. Linton* (2013) 56 Cal.4th 1146, 1176 (*Linton*).) " ' " 'On appeal, the trial court's findings as to the circumstances surrounding the confession are upheld if supported by substantial evidence, but the trial court's finding as to the voluntariness of the confession is subject to independent review.' " [Citation.]' [Citation.] ' "[W]hen a reviewing court considers a claim that a confession has been improperly coerced, if the evidence conflicts, the version most favorable to the People must be relied upon if supported by the record. [Citations.]" ' [Citation.]" (*People v. Tully* (2012) 54 Cal.4th 952, 993.)

1.3. Although two sets of statements defendant made during the hospital interview were obtained in violation of *Miranda*, the court's erroneous admission of those statements was harmless.

Defendant argues the court should have excluded the statements he made during his hospital interview because he unequivocally asserted his right to remain silent before the officers extracted those statements. He argues that once he told the officers he did not want to talk to them, they were required to cease their interrogation, and any statements he made after that point in the interview were obtained in violation of *Miranda*.

Under *Miranda*, police may not subject a suspect to custodial interrogation unless the suspect knowingly and intelligently waives the right to remain silent, the right to the

presence of an attorney, and, if indigent, the right to appointed counsel. (*People v. Dykes* (2009) 46 Cal.4th 731, 751.) The prosecution is prohibited from using any statements, whether exculpatory or inculpatory, that stem from the suspect's custodial interrogation unless it shows the suspect has been advised of his *Miranda* rights and has knowingly and intelligently waived them. (*People v. Farnam* (2002) 28 Cal.4th 107, 179–180.) " 'Once warnings have been given, the subsequent procedure is clear. If the individual indicates … that he wishes to remain silent, the interrogation must cease.' [Citation.]" (*People v. Case* (2018) 5 Cal.5th 1, 20 (*Case*).) "To end the interrogation, the suspect must invoke the right to silence unambiguously." (*Ibid.*)

Interrogation is defined as " ' "express questioning, or words or actions on the part of the police that "are reasonably likely to elicit an incriminating response from the suspect." ' [Citations.]" (*People v. Gamache* (2010) 48 Cal.4th 347, 387.) Interrogation, therefore, includes investigation-related questioning initiated by the police or its functional equivalent, not statements or conversation volunteered by the defendant. (*Ibid.*) " ' "Clearly, not all conversation between an officer and a suspect constitutes interrogation. The police may speak to a suspect in custody as long as the speech would not reasonably be construed as calling for an incriminating response." ' [Citations.]" (*People v. Huggins* (2006) 38 Cal.4th 175, 198.)

"Spontaneous statements are not the product of interrogation and therefore are not violative of *Miranda.* [Citation.]" (*People v. Mobley* (1999) 72 Cal.App.4th 761, 791–792 (*Mobley*), disapproved of on other grounds by *People v. Trujillo* (2006) 40 Cal.4th 165.) In addition, " '[a] defendant has not invoked his or her right to silence when the defendant's

statements were merely expressions of passing frustration or animosity toward the officers, or amounted only to a refusal to discuss a particular subject covered by the questioning.' [Citations.]" (*People v. Williams* (2010) 49 Cal.4th 405, 433 (*Williams*).)

As a preliminary matter, we note that defendant does not separately address each of the statements he made during the hospital interview that form the basis for his criminal threats conviction. Instead, he claims generally that the court should have excluded all of the statements he made during that interview on *Miranda* grounds.[8] This approach makes it difficult to evaluate defendant's challenge to the court's ruling because he made numerous threatening statements directed at Officer Stout and the interviewing officers before and after he stated he did not want to speak to the officers, and before and after they asked him any questions concerning the crimes they were investigating. And defendant's statements are reflected in a 13-page transcript. Nevertheless, we have separately analyzed the statements defendant made during the hospital interview. As we explain below, the court erred in admitting two sets of statements defendant made after the officers asked him numerous questions related to their investigation despite defendant's invocation of his right to remain silent. We conclude, however, the court's error was harmless beyond a reasonable doubt because the statements that should have been excluded were nearly identical to, and therefore cumulative of, other statements that were properly admitted.

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[8] At best, defendant contends the interview should have ended the first time he told the officers he didn't want to talk to them, or before he was given his *Miranda* rights.

With respect to the statements defendant made at the beginning of the interview, when he told the investigating officers that the officer who shot him "really should have killed him" and that the officer was going to have "a lot of problems on [his] hands," they were made in response to routine questions. That is, those threatening statements were made in response to questions that were akin to booking questions, such as whether defendant wanted to call anyone and whether he spoke Farsi. Consequently, those statements are not protected by *Miranda*. (See *People v. Honeycutt* (1977) 20 Cal.3d 150, 159 [police may ask a suspect routine booking questions before advising the suspect of his *Miranda* rights]; see also *Williams*, *supra*, 49 Cal.4th at p. 433 [spontaneous expressions of frustration or animosity toward interviewing officers do not constitute an invocation of a suspect's *Miranda* rights].)

Similarly, the statements defendant made toward the beginning of the interview in which he threatened to "slaughter[]" the officer who shot him and have that officer's mother and daughter "raped," and told officers to "record" what he was saying, were not obtained in violation of *Miranda*. To be sure, defendant invoked his right to silence before making these threatening statements, when he told the officers he did not want to talk to them and demanded that they "get the fuck outta [his] face." But none of these threatening statements were made in response to any questions likely to elicit incriminating responses. For example, defendant made the first statement threatening to slaughter Officer Stout immediately after Detective Elwell told defendant he needed to advise defendant of his *Miranda* rights and that defendant could refuse to speak to the officers after Detective Elwell had finished reading the advisement. And

defendant spontaneously threatened to rape Officer Stout's mother and daughter, and told the officers to record what he was saying, immediately after Detective Elwell finished advising defendant of his *Miranda* rights. (See *Mobley*, *supra*, 72 Cal.App.4th at p. 792; *Williams*, *supra*, 49 Cal.4th at p. 433.)

The other two sets of statements defendant made threatening to harm Officer Stout and his family were, however, obtained in violation of *Miranda*. Those statements came later in the interview, after the officers had explicitly refused to honor defendant's requests to stop the interrogation. Defendant made the first of those statements—again stating he was going to have the officer who shot him "slaughtered"—after the interviewing officers had asked him about 18 questions related to the crimes they were investigating and defendant's altercation with Officer Stout. Defendant made the second of those statements—that he would have the officer who shot him killed, that he would have that officer's mother raped and killed, and that he hoped the officers were recording his statements—after the interviewing officers had asked him about 20 additional questions related to their investigation (or nearly 40 total questions concerning their investigation). All of these statements were made after defendant had unambiguously invoked his right to silence, after the officers explicitly refused to honor defendant's request to terminate the interview, and in response to questions related to the crimes the officers believed defendant had committed as well as defendant's altercation with Officer Stout, questions that were likely to elicit incriminating responses. Consequently, the court should have excluded those statements under *Miranda*.

Although the court erred in failing to exclude the last two sets of threatening statements defendant directed toward Officer

Stout and his family, that error was harmless beyond a reasonable doubt. " 'The erroneous admission of a defendant's statements obtained in violation of the Fifth Amendment is reviewed for prejudice under the beyond a reasonable doubt standard of *Chapman v. California* (1967) 386 U.S. 18. … That test requires the People … "to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." ' [Citation.]" (*Case*, *supra*, 5 Cal.5th at p. 22.)

The two sets of defendant's statements the court should have excluded were nearly identical to other statements defendant made that the court properly admitted. For example, the court properly admitted the statements defendant made immediately before and after Detective Elwell advised defendant of his *Miranda* rights. In those earlier statements, like the later statements that should have been excluded, defendant threatened to have Officer Stout "slaughtered" and have the officer's wife and daughter "raped," and he told the interviewing officers to "record" those statements. Because the statements the court should have excluded were virtually identical to defendant's earlier statements, they were cumulative of other evidence that the court properly admitted. As a result, any error in admitting defendant's statements was harmless beyond a reasonable doubt. (See *People v. Ledesma* (2006) 39 Cal.4th 641, 709 [erroneous admission of evidence that violates a defendant's constitutional rights may be deemed harmless beyond a reasonable doubt if that evidence is cumulative of other evidence that was properly admitted].)

1.4. Defendant's statements were voluntary.

Defendant alternatively contends his hospital interview should have been excluded because his statements were

involuntary. Specifically, he claims he was "vulnerable, on heavy pain medication, and still feeling the effects of anesthesia" at the time the officers questioned him. Defendant forfeited this argument because he did not seek to exclude the statements on that basis in the trial court. (See *People v. Scott* (2011) 52 Cal.4th 452, 482; *People v. Holt* (1997) 15 Cal.4th 619, 667.)

Nevertheless, defendant claims his counsel was ineffective by failing to raise this issue in the trial court. To prevail on a claim of ineffective assistance of counsel, a defendant must show: (1) counsel's performance was deficient, such that it "fell below an objective standard of reasonableness under prevailing professional norms"; and (2) that defendant was prejudiced by counsel's omission—i.e., "a reasonable probability that, but for counsel's deficient performance, the outcome of the proceeding would have been different." (*People v. Mai* (2013) 57 Cal.4th 986, 1009.) "Counsel's failure to make a futile or unmeritorious motion or request is not ineffective assistance." (*People v. Szadziewicz* (2008) 161 Cal.App.4th 823, 836.)

The Fourteenth Amendment to the United States Constitution " 'precludes the admission of any involuntary statement obtained from a criminal suspect through state compulsion.' [Citation.]" (*People v. McCurdy* (2014) 59 Cal.4th 1063, 1086.) " ' " A statement is involuntary if it is not the product of ' "a rational intellect and free will." ' [Citation.] The test for determining whether a confession is voluntary is whether the defendant's 'will was overborne at the time he confessed.' " ' [Citations.] [¶] ' "A confession may be found involuntary if extracted by threats or violence, obtained by direct or implied promises, or secured by the exertion of improper influence. [Citation.] Although coercive police activity is a necessary

predicate to establish an involuntary confession, it 'does not itself compel a finding that a resulting confession is involuntary.' [Citation.] The statement and the inducement must be causally linked. [Citation.]" [Citation].' [Citation.] A confession is not rendered involuntary by coercive police activity that is not the 'motivating cause' of the defendant's confession." (*Linton*, *supra*, 56 Cal.4th at p. 1176.)

Here, defendant relies on *Mincey v. Arizona* (1978) 437 U.S. 385 (*Mincey*), to contend the statements he made to the officers at the hospital were involuntary. In *Mincey*, the defendant was shot during a raid of his apartment. (*Id*. at p. 387.) The defendant was rushed to the emergency room, where he received treatment for his wounds. (*Id*. at p. 396.) "He had sustained a wound in his hip, resulting in damage to the sciatic nerve and partial paralysis of his right leg. Tubes were inserted into his throat to help him breathe, and through his nose into his stomach to keep him from vomiting; a catheter was inserted into his bladder. He received various drugs, and a device was attached to his arm so that he could be fed intravenously. He was then taken to the intensive care unit." (*Ibid*.)

A detective went to the hospital about four hours after the shooting to talk to the defendant. (*Mincey*, *supra*, 437 U.S. at p. 396.) The detective told the defendant that he was under arrest for the murder of a police officer, advised him of his *Miranda* rights, and asked him questions about the raid. (*Ibid*.) The defendant could not talk because he had a tube in his mouth, so he responded to the detective's questions by writing answers on pieces of paper. (*Ibid*.) Although the defendant repeatedly requested counsel, the detective questioned him for almost four hours. (*Ibid*.)

The United States Supreme Court concluded the defendant's statements to the detective were involuntary. (*Mincey*, *supra*, 437 U.S. at p. 398.) The Court described the defendant as "a seriously and painfully wounded man on the edge of consciousness." (*Id.* at p. 401.) The defendant had arrived at the hospital " 'depressed almost to the point of coma' " mere hours earlier, was seriously wounded and still in the intensive care unit, and was "evidently confused and unable to think clearly about either the events of that afternoon or the circumstances of his interrogation, since some of his written answers were on their face not entirely coherent." (*Id.* at pp. 398–399.) The Court also observed the defendant was questioned while "lying on his back on a hospital bed, encumbered by tubes, needles, and breathing apparatus." (*Id.* at p. 399.) Despite his "debilitated and helpless condition," the defendant made numerous requests to stop the interrogation to retain counsel. (*Ibid.*) According to the Court, "the undisputed evidence ma[de] clear that [the defendant] wanted *not* to answer [the detective]. But [the defendant] was weakened by pain and shock, isolated from family, friends, and legal counsel, and barely conscious, and his will was simply overborne." (*Id.* at pp. 401–402.)

Although some of the circumstances surrounding defendant's hospital interview in this case are similar to those surrounding the interview in *Mincey*, there are critical distinctions between the two cases. First, unlike the interview in *Mincey*, which lasted about four hours, defendant's interview was relatively short, lasting only about thirty minutes.

Second, although defendant sought to terminate the interview in its early stages, he reinitiated the conversation on multiple occasions, frequently berating and threatening the

officers without provocation, and he never requested the assistance of an attorney.

Third, the record is devoid of any evidence that defendant was in debilitating pain. Although he was receiving pain medication at the time of the interview, the attending nurse indicated that defendant was receiving a "low dosage," and defendant never complained that he was in pain nor did he request to cease the interview because of his physical condition.

Finally, the record contains no evidence that the officers used physical or psychological pressure to elicit statements from defendant. (See *People v. Whitson* (1998) 17 Cal.4th 229, 248–249.)

We also reject defendant's contention that his bizarre statements during the hospital interview—for example, that he sold white women to Saudi Arabia or that he could have government officials killed—demonstrate that they were involuntary. While bizarre, many of these statements are consistent with other statements defendant made at various court hearings occurring months after the hospital interview. For example, defendant claimed at the preliminary hearing that he represented "the Islamic State in California." Thus, there is nothing in the record indicating any of the statements defendant made during the hospital interview were the result of defendant's medical treatment or condition.

In short, the record does not support a finding that defendant's statements forming the basis for his criminal threats conviction were involuntary. Consequently, defendant cannot show he was prejudiced by any failure of his trial counsel to seek to exclude those statements on that basis.

2. Sufficiency of the Evidence to Support Defendant's Convictions for Criminal Threats and Resisting an Officer

Defendant next contends insufficient evidence supports his convictions for criminal threats and resisting an officer. As we explain below, substantial evidence supports both convictions.

2.1. Standard of Review

When a defendant challenges the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether any rational trier of fact could have found the evidence proved the elements of the crime beyond a reasonable doubt. (*People v. Manibusan* (2013) 58 Cal.4th 40, 87.) We draw all reasonable inferences in favor of the judgment and do not resolve credibility issues or evidentiary conflicts. (*Ibid.*)

2.2. Criminal Threats

To support a conviction for criminal threats under section 422, the People must prove: (1) the defendant willfully threatened to commit a crime which would result in death or great bodily injury; (2) the defendant made the statement with the intent that it be taken as a threat; (3) the threat, on its face and under the circumstances in which it was made, was so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat; and (4) the threat caused the other person reasonably to be in sustained fear for his own safety or for the safety of his immediate family, regardless of whether the defendant actually intended to carry out the threat. (*People v. Butler* (2000) 85 Cal.App.4th 745, 753 (*Butler*).)

"[I]t is the circumstances under which the threat is made that give meaning to the actual words used." (*Butler*, *supra*, 85 Cal.App.4th at p. 753.) Thus, " '[t]he determination whether a defendant intended his words to be taken as a threat, and whether the words were sufficiently unequivocal, unconditional, immediate and specific they conveyed to the victim an immediacy of purpose and immediate prospect of execution of the threat can be based on all the surrounding circumstances and not just on the words alone. The parties' history can also be considered as one of the relevant circumstances. [Citations.]' [Citation.]" (*Id.* at p. 754.)

"Section 422 does not require that a threat be personally communicated to the victim by the person who makes the threat." (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 861.) But "where the accused did not personally communicate a threat to the victim, it must be shown that he specifically intended that the threat be conveyed to the victim." (*Ibid.*)

In this case, substantial evidence supports the court's finding that defendant violated section 422 when he threatened Officer Stout and his family. First, defendant threatened to commit a crime that would result in death or great bodily injury—he threatened to kill Officer Stout and rape Officer Stout's daughter and mother.

Second, there is evidence that defendant intended his statements be taken as threats and that the interviewing officers communicate those threats to Officer Stout. Defendant made the threats against Officer Stout less than 24 hours after Officer Stout shot him, at a time when defendant was still upset about that altercation. (See *In re Ryan D.*, *supra*, 100 Cal.App.4th at p. 863 ["usually threats that are made to, or in the presence of, an

authority figure are made when the threatener is in a rage, is under the influence of alcohol or drugs, or is attempting to serve an immediate purpose, such as dissuading a witness"].) When the officers asked defendant to clarify what he meant when he said Officer Stout was going to have a lot of problems on his hands, defendant replied that he "[didn't] need to explain [himself]" because they would "see" what would happen, indicating he intended to carry out the threats. In addition, immediately after telling the interviewing officers that he would have Officer Stout's mother and daughter raped, defendant told the officers to record his statements, which supports an inference that defendant intended the officers to relay those statements to Officer Stout.

Third, defendant's statements were clearly unequivocal, unconditional, immediate, and specific. This is not a case where defendant used only cryptic, equivocal, or ambiguous language or some form of non-verbal communication. Rather, defendant explicitly threatened to kill Officer Stout and rape members of his family. The circumstances surrounding the threats and the history between defendant and Officer Stout further bolster the immediacy of defendant's threats: at the time defendant made the threats, less than 24 hours had passed since Officer Stout shot him.

Defendant argues his threats toward Officer Stout lacked immediacy and a gravity of purpose because it appears the officers who interviewed him did not take the threats he directed at them seriously. But defendant was not charged with issuing criminal threats against those officers. Thus, whether those officers were concerned for their own safety is irrelevant in determining whether defendant's threats toward Officer Stout

carried the requisite specificity and gravity of purpose. In any event, the evidence supports an inference that the interviewing officers viewed defendant's threats as immediate and specific: they were aware of defendant's recent altercation with Officer Stout and they relayed defendant's statements to Officer Stout.

Finally, there was sufficient evidence to conclude defendant's threats caused Officer Stout reasonably to be in sustained fear for his and his family's safety. Officer Stout testified that he was concerned for his and his family's safety after the other officers told him about defendant's threats. And Officer Stout acted on that fear by installing new security equipment at his home and by changing the routes he drove to work and to his child's school. Officer Stout's fear was also reasonable because defendant had a motive to carry out his threats: Officer Stout had shot defendant less than 24 hours before defendant was interviewed by the police.

2.3. Resisting an Officer

Section 69 makes it a crime to "attempt[], by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law," or to "knowingly resist[], by the use of force or violence, the officer, in the performance of his or her duty." A police officer is included in the definition of " ' "executive officer." ' " (*People v. Orloff* (2016) 2 Cal.App.5th 947, 952.) To violate section 69, the defendant must have " 'a specific intent to interfere with the executive officer's performance of his duties. …' [Citations.]" (*Ibid.*)

Substantial evidence supports the court's finding that defendant violated section 69 when he threw a pan full of vomit at Officer Handlos. Officer Handlos testified that he was assigned to keep watch over defendant in defendant's hospital room.

Defendant testified he asked Officer Handlos to leave his room because he did not want a police officer present. Defendant also testified that he decided to throw the pan of vomit at Officer Handlos when the officer refused to leave the room. This evidence amply supports the court's finding that defendant intended to deter Officer Handlos from performing his official duty—i.e., guarding defendant's hospital room—by throwing the pan of vomit at the officer.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, Acting P.J.

WE CONCUR:

EGERTON, J.

KALRA, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.